

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Emmetsburg and Sibley, Iowa) )

MM Docket No. \_\_\_\_\_  
RM- \_\_\_\_\_

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To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Attention: **Mail Stop 1800D5**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PETITION FOR RULE MAKING**

1. Eisert Enterprises, Inc. ("Eisert"), licensee of KEMB(FM), Channel 261A, Emmetsburg, Iowa, by its attorneys, hereby petitions the Commission to amend the Table of Allotments, FM Broadcast Stations, as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Emmetsburg, IA	261A	261C3 <sup>1</sup>
Sibley, IA	262A; 282A	282A

2. As detailed in the Technical Statement attached hereto, grant of this petition will allow Eisert to substantially increase the size and population of KEMB's service area. Specifically, KEMB currently provides 60 dBu service to an area of 2,466 square kilometers containing 24,862 persons. If Eisert's proposal is adopted, and KEMB upgrades from a Class A to a Class C3, it

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<sup>1</sup> Since the proposed new allotment is mutually exclusive with the existing allotment, no competing expressions of interest in the new channel may be accepted; and if the new channel is allotted, it may be occupied only by KEMB.

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will provide 60 dBu service to an area of 4,536 square kilometers containing 49,055 persons – an increase of 24,193 persons spread over 2,070 square kilometers.

3. Eisert's proposal involves a change in class of channel for KEMB, from 261A to 261C3. Operation of KEMB from Channel 261C3 will continue to allow KEMB to place a city grade signal over Emmetsburg, Iowa, KEMB's community of license. As detailed in the attached Technical Statement, this reference point is fully spaced to all domestic allocations and operating stations, except for the mutual exclusivity to KEMB's current Class A operation and the now vacant Class A allotment on Channel 262 at Sibley, Iowa.

4. The reserved 262A allotment at Sibley was made more than 13 years ago. *See* 47 C.F.R. § 73.202. After remaining unoccupied for seven years, 21st Century Radio Ventures, Inc. ("21st Century") applied for and received a permit to construct a station on Channel 262A. *See* BPH-19930809MA. However, 21st Century failed to construct the station during the six years it held the permit, and the permit automatically expired on December 21, 2000.<sup>2</sup> *See id.*, as extended by BPH-19960521JA. Apparently, 21st Century determined that it was not cost effective to construct on Channel 262A and unsuccessfully petitioned the Commission to upgrade the channel to a Class C3. *See Sibley, Iowa, and Brandon, South Dakota, Report and Order*, MM Docket No. 96-66, 13 CC Rcd 22209 (1998), *aff'd*, DA 00-2226 (released September 29, 2000).

5. The failure of any party to show an interest in Channel 262A for the first seven years after it was allotted to Sibley, and the failure of 21st Century to construct a station on Channel

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<sup>2</sup> Eisert is not serving 21st Century with the instant petition since 21st Century's construction permit for Channel 262A expired. *See* 47 C.F.R. § 1.401(d) (requiring a petitioner to serve any licensee whose channel assignment would be changed by grant of the petition).

262A during the six years it held a construction permit to do so, clearly demonstrate a lack of interest in that channel. Such lack of interest provides strong support for Eisert's proposal to delete Channel 262A at Sibley. *See Florence and Comobabi, Arizona*, MM Docket No. 00-107, RM-9891, DA 00-2773 (released December 8, 2000) (deleting vacant Channel 275A, Comobabi, Arizona, without replacement after the channel was allotted 15 years ago and no expression of interest in retaining a Class A channel allotment at Comobabi was received).

6. Support for deleting Channel 262A at Sibley is further enhanced by the fact that Sibley has a second channel, Channel 282A, that has remained vacant since it was allotted. *See Sibley, Iowa*, MM Docket 98-219, RM-9390, 64 FR 41830 (1999).<sup>3</sup> In fact, the Commission intends to auction a construction permit for Channel 282A at Sibley during Auction No. 37, which is scheduled for February 21, 2001. *See FM Broadcast Auction Scheduled for February 21, 2001, Public Notice*, DA 00-2171 (September 25, 2000). Thus, if an entity has any interest in providing service to Sibley, the opportunity to provide that service will not be thwarted by the deletion of Channel 262A at Sibley; rather, any entity that wants to provide Sibley with service may do so if it is the highest bidder for the Sibley construction permit during Auction No. 37.

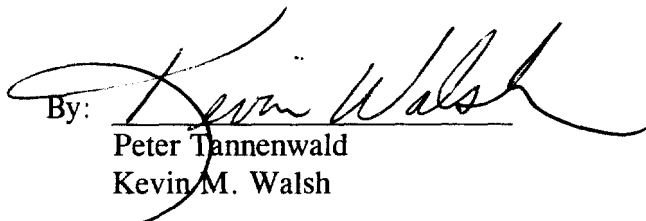
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<sup>3</sup> 21st Century is the entity that proposed allotting Channel 282A at Sibley.

7. In light of the foregoing, Eisert respectfully requests that the Commission issue a notice of proposed rule making inviting comments on this proposal and ultimately grant the proposal and approve operation of KEMB on Channel 261C3 at Emmetsburg, Iowa.

Respectfully submitted,

EISERT ENTERPRISES, INC.

By:   
Peter Tannenwald  
Kevin M. Walsh

Its Attorneys

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1730 Rhode Island Avenue, NW, Suite 200  
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(202) 728-0400

December 21, 2000

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**ORIGINAL FOR  
FILING WITH FCC**

*Prepared by:*

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# GRAHAM BROCK, INC.

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BROADCAST TECHNICAL CONSULTANTS

**PETITION FOR RULE MAKING**  
**EISERT ENTERPRISES, INC.**  
**ALLOT CHANNEL 261C3**  
**EMMETSBURG, IOWA**  
**December 2000**

**TECHNICAL EXHIBIT**

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**PETITION FOR RULE MAKING**  
**EISERT ENTERPRISES, INC.**  
**ALLOT CHANNEL 261C3**  
**EMMETSBURG, IOWA**  
**December 2000**

**TECHNICAL STATEMENT**

1. This technical statement and attached exhibits were prepared on behalf of Eisert Enterprises, Inc. ("EEI"), licensee of station KEMB, Channel 261A, Emmetsburg, Iowa. EEI herein requests the Commission amend §73.202 of its rules by substituting Channel 261C3 for Channel 261A at Emmetsburg. Further, it is requested the FCC order KEMB to change Class. In order to accommodate the allocation of Channel 261C3 at Emmetsburg, it is also requested that Channel 262A be deleted from Sibley, Iowa, without replacement.

**DISCUSSION**

2. KEMB would be able to upgrade to Class C3 facilities through the Commission's one-step application process were it not for the vacant allotment of Channel 262A at Sibley, Iowa.<sup>1</sup> Therefore, in order to upgrade, EEI respectfully requests the deletion of Channel 262A from Sibley, Iowa. This will not deprive Sibley, Iowa, of its potential for FM service since Channel 282A, was allotted to Sibley, Iowa, in MM Docket # 98-219 and Channel 282A is included in FCC Auction Number 37.<sup>2</sup> As such, EEI requests the deletion without replacement of Channel 262A from Sibley.

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- 1) An outstanding permit for station KAJQ, proposing operation on Channel 262A at Sibley, Iowa, expires on December 21, 2000. Channel 262A is, therefore, vacant.
- 2) Channel 262A is not part of Auction #37 since KAJQ's permit was still valid at the time the auction process had commenced.

## **REQUEST**

3. EEI requests the substitution of Channel 261C3 for Channel 261A at Emmetsburg, Iowa, at North Latitude 43° 07' 24" and West Longitude 94° 51' 29". This represents a site restriction of 14.7 kilometers west of the community in order to avoid shortspacing KAUS-FM, Austin, Minnesota, and KMXD, Des Moines, Iowa, and to accommodate the use of the present KEMB transmitter site. Attached as Exhibit #1 is a map denoting where a transmitter site for Channel 261C3 can be located in Emmetsburg, Iowa. From the proposed reference site, a 3.16 mV/m signal will be delivered over all of Emmetsburg. Exhibit #2 is a §73.207 spacing analysis for Channel 261C3 at Emmetsburg and demonstrates the channel meets the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities.<sup>3</sup> Both exhibits assume Channel 262A is deleted from Sibley, Iowa.

4. Therefore, EEI requests the following amendment to §73.202 of the rules:

### **Emmetsburg, Iowa**

<b><u>Present</u></b>	<b><u>Proposed</u></b>
261A	261C3

### **Sibley, Iowa**

<b><u>Present</u></b>	<b><u>Proposed</u></b>
262A, 282A	282A

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3) It is noted that a proposed Channel 261C3 allocation to Emmetsburg may show as shortspaced to the proposed allocation of Channel 261C3 to Brandon, South Dakota, as requested in MM Docket #96-66. However, the Commission allotted Channel 261A in lieu of Channel 261C3 to Brandon, South Dakota, in that Docket. Therefore, Channel 261C3 at Brandon is not considered.

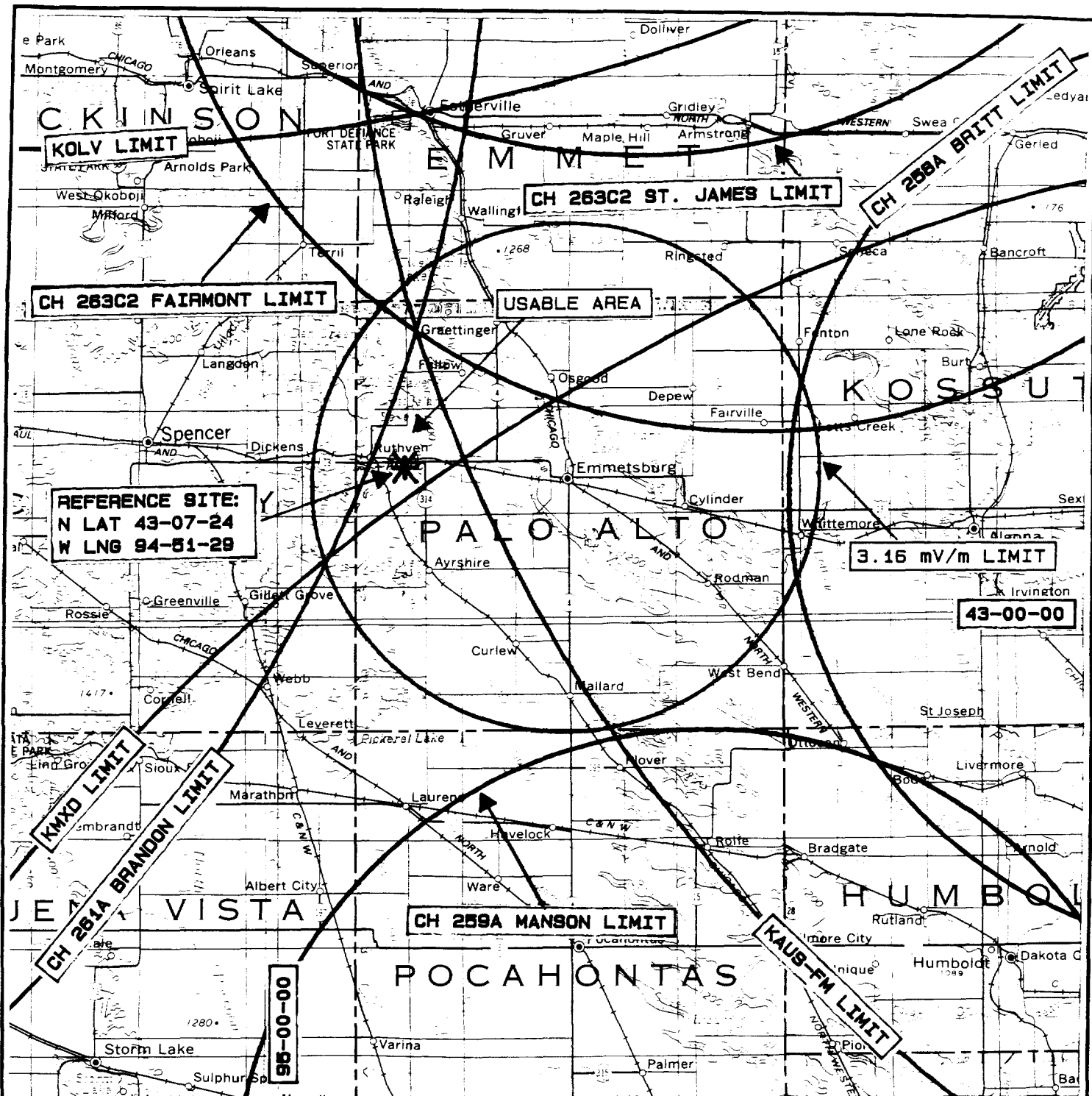
## **PUBLIC INTEREST ASPECTS**

5. The upgrade of KEMB will provide the community of Emmetsburg with its first expanded coverage facility. Operating as a maximum Class C3 facility, KEMB would provide a 60 dBu contour over 4,536.4 square kilometers in which 49,055 persons reside.<sup>4</sup> This represents an increase of 24,193 persons in 2,070.2 square kilometers over the present Class A.<sup>5</sup>

6. Once Channel 261C3 is allocated to Emmetsburg, EEI will submit a minor change application, FCC Form 301, requesting authorization to implement a C3 facility at Emmetsburg. Upon a grant, it will construct the improved KEMB facility.

7. The foregoing technical statement was prepared on behalf of Eisert Enterprises, Inc. by Graham Brock, Inc., its Technical Consultants. All information contained herein is true and accurate to the best of its belief and knowledge. All data regarding FM facilities was extracted from the CDBS database, as updated on December 14, 2000. We assume no liability for errors or omissions in the database which may be adverse to the requests contained herein.

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- 4) Coverage is based on a maximum Class C3 contour without the affects of terrain. Population data is 1990 Census.
- 5) The present KEMB authorized facilities provide 60 dBu service to 24,862 persons in 2,466.2 square kilometers.

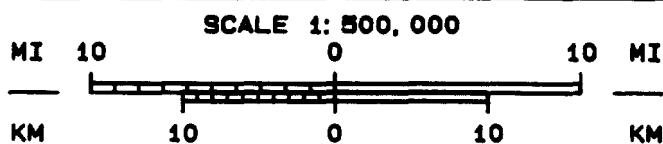


# USABLE AREA MAP

MAP IS A PORTION OF THE 1: 500, 000 SALE  
U.S.G.S. BASE STATE MAP OF IOWA.

EXHIBIT #1  
PETITION FOR RULE MAKING  
EISERT ENTERPRISES, INC.  
ALLOT CHANNEL 261C3  
EMMETSBURG, IOWA

December 2000



**GRAHAM BROCK, INC.**  
BROADCAST TECHNICAL CONSULTANTS

**PETITION FOR RULE MAKING**  
**EISERT ENTERPRISES, INC.**  
**ALLOT CHANNEL 261C3**  
**EMMETSBURG, IOWA**  
**December 2000**

**EXHIBIT #2**

ALLOCATION STUDY FOR CHANNEL 261C3 EMMETSBURG, IOWA  
USING PRESENT KEMB SITE AS REFERENCE

REFERENCE		DISPLAY DATES
43 07 24 N	CLASS C3	DATA 12-14-00
94 51 29 W	Current rules spacings	SEARCH 12-15-00
----- CHANNEL 261 -100.1 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
<b>KEMB</b>	<b>261A</b>	<b>Emmetsburg</b>	<b>IA</b>	<b>0.0</b>	<b>0.00</b>	<b>142.0</b>	<b>-142.00</b>
LIC CN	43 07 24	94 51 29	3.900 kW	125M	0.0	88.3	
Eisert Enterprises, Inc.				BLH-19980917KC			
* KAJQ.C	262A	Sibley	IA	285.9	72.92	89.0	-16.08
CP CN	43 17 58	95 43 21	6.000 kW	72M	45.3	55.3	
21st Century Radio Ventures				BPH-19930809MA			
KMXD	262C	Des Moines	IA	144.7	178.23	176.0	2.23
LIC CN	41 48 33	93 36 53	100.000 kW	518M	110.8	109.4	
Citicasters Co.				BMLH-19980410KB			
RADD	261A	Brandon	SD	292.1	144.84	142.0	2.84
ADD	43 36 02	96 31 15	0.000 kW	0M	90.0	88.3	
				RM-8729			
KAUSFM	260C1	Austin	MN	67.2	149.12	144.0	5.12
LIC CN	43 37 42	93 09 12	100.000 kW	283M	92.7	89.5	
Three Eagles Of Luverne, Inc.				BLH-4037			
RADD	263C2	Fairmont	MN	28.5	67.00	56.0	11.00
ADD	43 39 08	94 27 39	0.000 kW	0M	41.6	34.8	
				9714			
AVAC	259A	Manson	IA	158.0	71.06	42.0	29.06
VAC N	42 31 48	94 32 00	0.000 kW	0M	44.2	26.1	
RADD	259A	Manson	IA	158.0	71.06	42.0	29.06
ADD	42 31 48	94 32 00	0.000 kW	0M	44.2	26.1	
RDEL	263C2	St. James	MN	13.8	86.03	56.0	30.03
DEL	43 52 29	94 36 04	0.000 kW	0M	53.5	34.8	
				9714			
KOLV	261C2	Olivia	MN	351.5	207.64	177.0	30.64
LIC CN	44 58 14	95 14 59	50.000 kW	142M	129.1	110.0	
Bold Radio, Inc.				BLH-19990122KA			
970103	258A	Britt	IA	91.5	76.44	42.0	34.44
APP CN	43 06 05	93 55 10	6.000 kW	100M	47.5	26.1	
Lyle Robert Evans				BPH-19970103MA			

\*Note : The construction permit for KAJQ will expire on December 21, 2000.

**AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT**

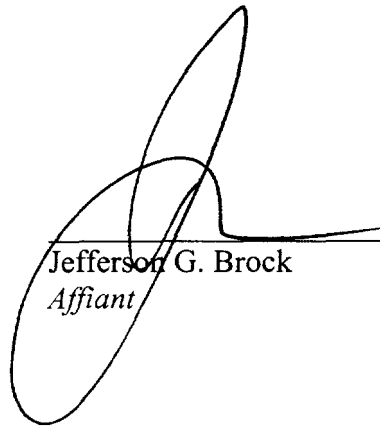
State of Georgia    )  
St. Simons Island   ) ss:  
County of Glynn    )

**JEFFERSON G. BROCK**, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Eisert Enterprises, Inc., licensee of Radio Station KEMB, to prepare the attached Technical Exhibit.


His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

*This the 15th day of December, 2000.*

  
\_\_\_\_\_  
Jefferson G. Brock  
Affiant

*Sworn to and subscribed before me  
this the 15th day of December, 2000.*

  
\_\_\_\_\_  
Notary Public, State of Georgia  
My Commission Expires: April 20, 2002